IN THE HIGH COURT OF BOMBAY AT GOA

P.I.L. WRIT PETITION NO.9 OF 2001

1. People for elimination of
   Stray Troubles (PEST) by its
   Convenor Dr. Rosario Menezes
   r/o C-3, Sapna Enclave,
   Vaddem, Vasco-da-Gama,
   Goa-403802;

2. Dr. Rosario Menezes,
   r/o C-3, Sapna Enclave,
   Vaddem, Vasco-da-Gama,
   Goa-403802 ... PETITIONERS.

VERSUS

1. State of Goa by its
   Chief Secretary,
   Secretariat, Panaji,Goa;

2. Director of Municipal
   Administration,
   Panaji, Goa;

3. Director of Panchayats,
   Panaji, Goa;

4. Animal Welfare Board
   through its Chairman,
   Secretary, Animal Husbandry,
   Secretariat,
   Panaji, Goa;

5. People for Animals through
   its Trustee and Secretary
   Angela Kazi, 314, Beach Nest,
   Miramar, Panaji, Goa;

6. International Animal Rescue
   through its Chairman John Hicks,
   Animal Tracks, Murdungo Vaddo,
   Assagao, Bardez, Goa;

7. Goa Animal Welfare Trust
   through its President
   Suresh Kakodkar, 1158,
   'Shreyas' Vidyanagar Colony,
   Vidyanagar,Margao,Goa;

8. Panjim Municipal Council
   through its Chief Officer;

9. Mapusa Municipal Council
   through its Chief Officer;

10.Mormugao Municipal Council
through its Chief Officer;

11.Margao Municipal Council
through its Chief Officer;

12.Bicholim Municipal Council
through its Chief Officer;

13.Canacona Municipal Council
through its Chief Officer;

14.Cuncolim Municipal Council
through its Chief Officer;

15.Curchorem Municipal Council
through its Chief Officer;

16.Ponda Municipal Council
through its Chief Officer;

17.Pernem Municipal Council
through its Chief Officer;

18.Quepem Municipal Council
through its Chief Officer;

19.Sanguem Municipal Council
through its Chief Officer;

20.Valpoi Municipal Council
through its Chief Officer;

21.Salvador do Mundo Village Panchayat
through its Secretary;

22.Guirim Village Panchayat
through its Secretary;

23.Tivim Village Panchayat
through its Secretary;

24.Assnora Village Panchayat
through its Secretary;

25.Old Goa Village Panchayat
through its Secretary;

26.Corlim Village Panchayat
through its Secretary;

27.Merces Village Panchayat
through its Secretary;

28.Santa Cruz Village Panchayat
through its Secretary;

29.Bambolim Village Panchayat
through its Secretary;

30.Goa Velha Village Panchayat
through its Secretary;

31.Agacaim Village Panchayat
through its Secretary;

32.Cortalim Village Panchayat
through its Secretary;

33.Chicalim Village Panchayat
through its Secretary;

34.Nuvem Village Panchayat
through its Secretary;

35.Verna Village Panchayat
through its Secretary;

36.Benaulim Village Panchayat
through its Secretary;

37.Colva Village Panchayat
through its Secretary;

38.Navelim Village Panchayat
through its Secretary;

39.Candolim Village Panchayat
through its Secretary;

40.Penha de Franca Village Panchayat
through its Secretary;

41.Arpora Village Panchayat
through its Secretary;

42.Anjuna Village Panchayat
through its Secretary;

43.Saligao Village Panchayat
through its Secretary;

44.Calangute Village Panchayat
through its Secretary;

45.Aldona Village Panchayat
through its Secretary;

46.Shiroda Village Panchayat

through its Secretary ... RESPONDENTS.

Mr. Aires Rodrigues, Advocate for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General, with Mr. P.A. Kamat, Addl. Government Advocate, for Respondents No.1 to 4.

Ms. N. Alvares, Advocate for Respondents No.5 and 7.

Mr. A.J.R. Couto, Advocate for Respondent No.8.

Mr. S.D. Padiyar, Advocate for Respondents No.9, 10, 11 and 12.

Mr. Sudesh Usgaonkar, Advocate for Respondent No.13.

Mr. P.A. Kholkar, Advocate for Respondent No.14.

Mr. N.K. Sawaikar, Advocate for Respondent No.15.

Mr. S.D. Lotlikar, Sr. Advocate, with Mr. A.D. Bhobe, Advocate, for Respondents No.18 and 19.

Mr. F.A. Tavora, Advocate for Respondents No.25, 26, 27, 28, 29, 30 and 31.

Mr. Guru Shirodkar, Advocate for Respondent No.32.

Mr. N. Sardessai, Advocate for Respondent No.39.

CORAM : D.G. DESHPANDE &
P.V. HARDAS,JJ.

DATED : JANUARY 7, 2003.

JUDGMENT (Per **D.G. DESHPANDE,J.)**

This public interest Writ Petition is filed by the Petitioners against the State of Goa

and about 38 or 39 local bodies including Municipalities and Village Panchayats for fulfilling their obligatory dues under their respective Acts, for confinement and elimination of stray dogs/cattle and for preventing and checking the spread of dangerous diseases and accidents and further restraining the animal welfare organizations from interfering with the local Bodies in the discharge of their statutory responsibilities and obligations and if they fail to abide by such restraint, then make them liable financially as well as legally for all the losses and sufferings of the public and for other reliefs which includes providing compensation to the victims of bites or accidents caused by stray dogs.

2. This Petition is opposed mainly by the Intervenors who are the N.G.Os. who applied for intervention but the opposition is not to demand that the menace of the stray dogs should be curbed but the opposition is to the **modus operandi** to be used.

3. Respondent No.5 i.e. People for Animals, has opposed this Petition strongly. According to them, the Petitioners have made reckless and sweeping allegations without any material. They have stated that they filed Writ Petition before this Bench in 1988 in public interest litigation praying that barbaric practice of shooting stray dogs should be stopped forthwith and as a consequence of this Petition, certain steps were taken by the Authorities, namely, formation of State Advisory Board for Animal Welfare in April 1999 and, secondly, Panaji Municipal Council preparing the scheme for control of stray dog population in Panaji Municipal area. Thereafter, they signed M.O.U. with Panaji Municipal Council to implement the scheme and agreeing to sterilize 1200 dogs per annum under the Animal Birth Control programme. They were allotted land for setting up animal shelter at St. Inez in May 1999 and on an average according to them, 150 to 200 stray dogs are sterilized per month at the shelter and various other steps are taken and they have been informed by Panaji Municipal Council that the stray dog menace has decreased. They have also stated that sterilisation programme is also initiated in other Municipalities. That they sent municipal report

about their working to the Director of Animal Husbandry and other Municipal Councils and in this background, they oppose this Writ Petition. Their grievance is that no genuine efforts are made by the Petitioners' Organization to visit the animal shelter of the Respondent No.5 and to appreciate the work done by them.

4. From the record it appears that Writ Petition No.373 of 1998 is the petition to which the Respondent No.5 has referred to above and that the Petition was filed to ban the practice of dog shooting in the State of Goa. It came to be finally disposed of by the Division Bench on 20th July, 1999 in view of the steps taken by the Government as stated above. Consequently, the prayer of the Petition to impose such ban on dog shooting was not pressed nor was granted. Therefore, the prayers of the Petitioners in this Petition before us No.9 of 2001 require serious consideration.

5. A judgment of the Division Bench consisting of M.B. Shah,C.J. (as he then was) was also cited before us by the contesting Respondents, because according to them, this judgment clearly lays down that shooting of the dogs was not

permissible. The Counsel for the Petitioners stated that this judgment of the Division Bench in Writ Petition No.165 of 1998 is a judgment given by the consent of the parties on the basis of the consent terms and, therefore, it cannot be read as a binding precedent and, secondly, in that judgment the provisions of the Prevention of Cruelty of Animals Act were not at all considered nor discussed. Therefore, according to the Petitioners, the said judgment cannot come in their way in seeking the relief asked for. Alternatively, they prayed that looking to the seriousness of the problem and the shortcomings of the schemes, the matter was required to be referred to a larger Bench.

6. So far as the prayer relating to cattle menace is concerned, the Government of Goa has already taken steps in the matter by publishing a scheme for control of stray cattle as per the Notification, copy of which was given to the Advocate for the Petitioner, and they are satisfied with the steps taken. Therefore, so far as the stray cattle is concerned, we are not passing any Order.

7. The Petitioners have annexed with this Petition certain newspapers cuttings about the victims of the dog bites and have given all the necessary particulars which throw light on the seriousness of the problem. In fact, there cannot be any second opinion that stray dogs do not pose any danger to the society or they do not cause any harassment or suffering.

8. The menace of dogs and particularly of stray dogs is going beyond control. Stray dogs are seen in large numbers in every village, every city or town and in every locality of cities or towns, at railway stations, at markets or market places, at S.T. bus stands, at railway stations and every place where there is human habitation. They are also found in large number at, in or around temples, churches, or other places of worship, at playgrounds, gardens and beaches. These dogs run after pedestrians, run after vehicles or bicycles, after children, after the aged and infirm. They come from nowhere. They come suddenly, and vanish with speed of lightening.

9. The stray dogs pose many problems for everyone and to every human habitation or at public places. But the most serious problem that

is posed by the stray dogs is when they bite a man. The dog may be perfectly healthy or may be suffering from Rabies. But the victim cannot ascertain whether it was a mad dog or a sane one because the dog does not leave behind any identifying note or particulars, on the victim, and since all the dogs look alike, at least so far as stray dogs are concerned, it is difficult to identify the dog, make verification and then to decide whether to take the agonizing course of medicine.

10. Rabies virus infects the central nervous system, causing encephalopathy and ultimately death. Early symptoms of rabies in humans are nonspecific, consisting of fever, headache, and general malaise. As the disease progresses, neurological symptoms appear and may include insomnia, anxiety, confusion, slight or particla paralysis, excitation, hallucinations, agitation, hypersalivation, difficulty in swallowing, and hydrophobia (fear of water). Death usually occurs within days of the onset of symptoms.

11. The agony and suffering of a victim of dog biting are only to be experienced or seen.

The risk of a dog bite is fatal, In fact a simple natural death is preferable to the one that is consequence of being bitten by a Rabies suffering dog. The victim becomes and behaves like a dog himself with a strong impulse to bite any one coming in his way or opposing him. Even the dearest and the nearest are dreadfully afraid of going to or approaching such a victim. There is no cure in such a situation and such a patient has to be confined till he dies.

12. The agony of the victims who are luckily not bitten by a Rabies affected dog are not any way less. He has to undergo a treatment of taking 14 injections all of which are to be given in the stomach without any break. May be that the number of injections has now been reduced to seven or nine but the agony is the same. If there is any break in the treatment then the same course has to be repeated again adding to the suffering.

13. Taking of these injections is not less costly. It is in fact a burden on everybody's purse. In cities there are government and municipal hospitals and private hospitals also where the necessary medicines may be available. But in villages and rural areas where the only

center is the primary health center for a group of villages, the victims have to go to that Center at his expenses and causing loss of his daily earning. If the victim is a child or an aged person then some one has to accompany him adding to the expenses.

14. Further, this treatment is very costly. May be that government hospitals and municipal hospitals provide it without any charge but looking to the present trend in the society and the serious consequences, one would prefer to go to a private doctor or to a private hospital. In that case he will have to shell out not less than 2500 to 3000 rupees for this treatment.

15. Even in the United States the situation is no less serious, the estimated public health costs associated with disease detection, prevention, and control have risen, exceeding $300 million annually. These costs include the vaccination of companion animals, animal control programs, maintenance of rabies laboratories, and medical costs, such as those incurred for rabies postexposure prophylaxis (PEP).

16. Although the number of PEPs given in

the United States each year is unknown, it is estimated to be about 40,000. When rabies becomes epizootic or enzootic in a region, the number of PEPs in that area increases. Although the cost varies, a course of rabies immune globulin and five doses of vaccine given over a 4-week period typically exceeds $1,000. The cost per human life saved from rabies ranges from approximately $10,000 to $100 million, depending on the nature of the exposure and the probability of rabies in a region.

17. In fact rabies not only affects the human they also affect other animals and pets. It is difficult, however, to estimate the global impact of rabies by using only human mortality data. Because vaccines to prevent human rabies have been available for more than 100 years, most deaths from rabies occur in countries with inadequate public health resources and limited access to preventive treatment. These countries also have few diagnostic facilities and almost no rabies surveillance.

18. Underreporting is a characteristic of almost every infectious disease in developing countries, and increasing the estimated human mortality does not in itself increase the relative

public health importance of rabies. There is, however, one often neglected aspect of rabies that does affect perception of its importance. Rabies is not, in the natural sense, a disease of humans. Human infection is incidental to the reservoir of disease in wild and domestic animals; therefore, a more accurate projection of the impact of rabies on public health should include an estimate of the extent to which the animal population is affected and the expense involved in preventing transmission of rabies from animals to humans.

19. Rabies is not the only disease that is gifted by dogs to man. In fact there are other serious diseases which can be spread by the dogs and particularly stray dogs. For example:- There are several ZOONOTIC diseases that can be transmitted from dogs to people – most are in the stool. These include bacterial infections such as salmonella, campylobacter, and shigella, and parasites which include roundworms, hookworms, giardia infection, toxoplasmosis, and certain tapeworms. Therefore routine fecal exams for pets are CRITICAL. As long as your pet is free from these parasites, transmission via saliva would be unlikely. Of course rabies is another

transmissible disease which can be transmitted via saliva into a open wound or cut. This is a rare virus and dogs infected with it usually show violent symptoms like gnashing teeth, foaming at the mouth or biting uncontrollably. Finally, certain fungal diseases can also be transmitted via spore contact such as ringworm (microsporum).

20. The nuisance of dogs becomes more and more serious because of the reproductive capacity and power of the dog s. The following scientific data from Encyclopaedia Britanica Vol.VII pg 545 speaks for itself:-

> " Dogs belong to the family of wolves. However, wolves become sexually mature after the age of two years, but females of most breeds of the domestic dogs will show their first heat (or estrus) before they are a year old and sometimes before six months. The pattern of any individual dog is usually fairly consistent, but longer and shorter cycles are common. The

> period of gestation is approximately nine weeks. Litter size varies roughly with the size of the breed. But there is great individual variation. Some toy breeds rarely have more than one or two puppies whereas the setters and larger breeds may have eight to ten with some record, litters going much higher. Four to six is a good average. The reproductive power of female diminishes after five years of age and the reproductive cycle ceases by the age of eight. Males usually remain capable of breeding to a more advanced age, but the male of six years is entering middle age. "

21. Looking to the gestation period of the dogs which is only nine weeks and the fact that the females of most breeds of domestic dogs show their first heat before they are one year old and

sometimes before six months and their reproductive cycle continues upto the age of eight years and so far as male dog is concerned six years is their middle age and the rate of litters is 4 to 6 in average, then anybody can visualize what will be thee tremendous growth in dog population in one particular year or one season. And considering the fact that most of these dogs have no shelter and they have to remain on the streets as stray dogs, the gravity of the problem worsens.

22. Counsel for the Intervenor tried to contend that N.G.Os. are doing noteworthy work in this regard and certain facts and figures were also placed at our disposal about sterilization record of ABC program in Goa and total number of sterilization from 1997 is 14433. The prayer b) of the Petition prays for restraining the A.W.O. from interfering with the Municipalities/Panchayat Authorities in the discharge of their legal duties should not be granted.

23. The question, in our opinion, is not of disallowing the A.W.O. from working in the direction which they are doing. However, the crucial question is whether sterilization alone can be the only solution to the grave and serious

problem of stray dogs and the answer is obviously in the negative.

24. Though this Petition is filed for the menace of dogs in Goa, the menace is not restricted to the State of Goa alone. It is creating similar problem in the State of Maharashtra also. N.G.Os. working with devotion may be many, but they are not spread all over the State. Their man power and resources are limited and they cannot effectively deal with this problem. N.G.Os. may be working in urban areas, but they cannot effectively deal with vast area of the State and in all areas where the problem of stray dogs is posing danger to the humanity or to the human population.

25. This Petition was amended in order to bring certain facts on record and as per Para 44A of the Petition, the Director of Animal Husbandry & Veterinary Services, Government of Goa, has given certain statistics pertaining to stray dogs in his Press interview and as per the information given by the Director, there are about a lakh stray dogs in the State of Goa and 78,838 pet dogs. Further, as confirmed by him, i.e. the Direct or, sterilization of stray dogs is carried out only in few areas specially in North Goa and the stray dog

population has risen ever since the N.G.Os have been carrying out the work of sterilization. The Director has confirmed that only about 13,000 stray dogs were sterilized but it was necessary that at least 60 to 70% of the dog population has to be sterilized in order to bring the stray dog population under control. The Director has also quoted as saying that the work of N.G.Os was limited to certain specific areas and there was no such work in other areas where such dog population was multiplying. It is true that Animal Welfare Boards have been established and Rules called as Animal Birth Control (Dog) Rules 2001 have been framed under the Prevention of Cruelty to Animals Act and that the N.G.Os are doing their work in achieving a specific goal i.e. control in dog population. However, looking to the enormity of the problem and serious consequences arising out of the problem and also because of dog biting and other diseases which are carried by the dogs, the question remains whether there should be a ban on shooting of the dogs or eliminating dogs or making dogs to sleep.

26. As to the financial implications of dog menace one has to refer to the Writ Petition No.2576 of 2000 which was filed before the Bombay

Bench by the Airport Authority of India, after the judgment was delivered by the Division Bench in Writ Petition No.159 of 1998 which laid down Comprehensive Guidelines for the dog control and management.

27. In Writ Petition No.2576 of 2000, it was the grievance of the Airport Authority of India that an area of 200 acres surrounding the St. Cruz Airport in Bombay was encroached upon by slum population. The boundary wall erected around the area was frequently broken down by the dwellers of such unauthorised structures and large number of stray dogs were noticed in and around the Airport often and stray dogs were also found entering into the critical operational/movement area of the Airport. Airport Authority contended that it was impossible to prevent or control the entry of the stray dogs. The Airport Authority pointed out about 15 incidents where because of ;the entering of the dogs in the runway area, the take-off or landing of aircraft had to be aborted. This happened between 5th of November,2000 and 30th of November,2000 i.e. within 25 days and all this resulted in huge loss to the Airport Authority and posing dangers of security to the travellers by airplanes. They also pointed out that it was

virtually impossible for the Authorities to catch dogs and capturing of dogs by using humane methods such as lassoing or by using soft-loop animal-catchers was impracticable. The Division Bench considering all the matters gave certain directions and also expressed that if the nuisance continued then a direction to put the dogs to sleep will be required to be considered. Ultimately, the Division Bench observed that "the State of Maharashtra as well as the Mumbai Municipal Corporation will do their best to see to it that the sentiments and emotions of the animal lovers are not hurt and to the extent possible, life of animals is respected. May be, in extreme situations harsh measures may have to be evolved which we would like to avoid". Similar question appears to have been raised in another Writ Petition No.157 of 2000 before the Bombay Bench. It is, therefore, clear that this Court has given guidelines to the Mumbai Municipal Corporation and the State of Maharashtra in the earlier Petition and which stood somewhat modified in view of the Petition filed by the Airport Authority. It is clear, however, that those measurers are not at all sufficient in order to effectively control the menace of stray dogs and, particularly, the serious consequences faced by the victims of dog bites.

28. The question, therefore, is whether love for animals and compassion for animals should be stretched to such an extent as to endanger human life. In fact, while passing the Prevention of Cruelty to Animals Act, 1960, care has been taken in the Act itself in this regard. Chapter III deals with "cruelty to animals generally" and Section 11 of the said Act defines what is meant by treating animals cruelly. Sub-section (3), however, carves an exception as it reads as under:-

> "(3) Nothing in this section shall apply to ---
>
> (a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or
>
> (b) the destruction of stray dogs in lethal chambers or [by such other methods as may be prescribed]; or
>
> (c) the extermination or destruction of any animal under the authority of any law for the time being in force; or
>
> (d) any matter dealt with in Chapter IV; or
>
> (e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any

> animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

29. It will be clear that Sub-section (3) permits destruction of stray dogs in lethal chambers or by such other method as may be prescribed. Clause (c) provides for extermination or destruction of any animal under the authority of any law for the time being in force. The manner in which Section 11 is drafted it will clearly show that destruction of stray dogs is not at all considered to be cruelty to animals because Sub-section (3) carves out a complete exception to Section 11. Further, the Preamble of the Act reads as "An Act to prevent the infliction of unnecessary pain or suffering on animals". Chapter II of the Act deals with "Animal Welfare Board of India" and Section 4(1) also is worded as "For the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering..." Section 9 of the Act speaks about the "Functions of the Board" and Sub-section (b) relates to the giving advice to the Central Government on making

of Rules under this Act with a view to preventing unnecessary pain or suffering to the animals. It will, therefore, be clear that firstly, destruction of stray dogs does not amount to giving any cruelty to animals as provided by Sub-section (3) of Section 11 and, secondly, the object of the Act and also the object of promotion of Animal Welfare Board is to prevent unnecessary pain and suffering. It is clear, therefore, from the wordings that if infliction of pain or suffering is necessary or a necessary will of a particular Act, then the same cannot be prevented or prohibited. We, therefore, find that the Prevention of Cruelty Act, 1960 does not prohibit at all extermination or destruction of stray dogs. Therefore, there is no legal impediment in that regard.

30. So far as the provisions of Goa Municipalities Act are concerned, our attention was drawn to Section 278, the heading of which is "Provision as to Dogs" and Sub-section (4) provides that any dog which is not claimed within the period specified in sub-section (3) or any dog the owner of which has failed to comply with the provision of sub-section (2) within the specified period, may be sold or destroyed by the Chief Officer. It also provides that any dog which is found to be rabid

may be destroyed at any time. Therefore, Counsel for the Petitioners contended that looking to the provisions of the Prevention of Cruelty to Animals Act and particularly, to the provisions of Section 278 of the Goa Municipalities Act, destruction of stray dogs was permissible. Similar provisions is also to be found in the Bombay Municipal Corporation Act, 1888, Section 191-A which was substituted for the original in 1995 by an amendment and Sections 191-B, 191-BA to 191-C cover this subject, namely about licensing and taxing the dogs. Sub-section (3) of Section 191-B provides that any dog which was no number ticket so attached or suspended or is kept in contravention of any of the conditions specified in the licence shall be presumed to be a dog in respect of which no licence has been granted. Section 191-BA provides that if any dogs are found or reported to be a source of nuisance to the residents of any building or locality, the Commissioner or any person duly authorised by him may enter any premises for the purposes of seizing such dogs. Sub-section (2) provides that any dog so seized shall be kept in municipal kennel and if nobody claims the dog within three days and satisfies that he is the owner of the dog, then the Commissioner is given powers to destroy the dog. Sub-section (4) of

Section 191-BA also gives power to Commissioner to destroy a stray dog and the most important provision is under Section 191-C which specifically gives protection to all persons acting in good faith in pursuance of the provisions of Section 191-B or Section 191-BA from institution of any suit or prosecution against them for whatever is done by them under those Acts.

31. The Maharashtra Municipalities Act, 1965 also makes a similar provision giving powers to the Chief Officer to sell or destroy the dog if nobody comes to claim it within three days. Sub-Section (2) of Section 293 empowers the Chief Officer to take possession of any dog found wandering unmuzzled in any public street and subject to the provisions of Sub-sections (3) or (4) cause it to be sold or destroyed. Sub-section (5) also empowers the Chief Officer to destroy or cause to be destroyed or confine or cause to be confined any dog or animal suffering from rabies or reasonably suspected to be suffering from rabies or bitten by any dog or other animal suffering or suspected as aforesaid. It will, therefore, be clear that the Goa Municipalities Act, the Bombay Municipal Corporation Act and the Maharashtra Municipalities Act do empower the local Bodies to

eliminate dogs particularly stray dogs and dogs suffering from rabies. When these provisions are taken and read together with the provisions of the Prevention of Cruelty to Animals Act, 1960, it will be clear that the Legislature, i.e. Central as well as the State Legislature, in its wisdom thought it necessary to order elimination of stray dogs.

32. However, it is a fact that inspite of these legal provisions and authorisation by Central Statutes as well as State Statutes, no effective steps are taken for elimination of stray dogs and if at all any steps are taken, they are too scanty and meagre looking to the enormity of the problem.

33. It is true that animals should not be subjected to unnecessary suffering or pain, but when the question arises between suffering of a man or whole lot of human population on one side, and the suffering of animals particularly stray dogs on the other side, then looking to the provisions of the Prevention of Cruelty to Animals Act,1960 and the aforesaid three important Municipal legislations, i.e. the Goa, Maharashtra and Bombay, then the prayers in this Petition cannot be

said to be unreasonable or cruel. In fact, they are the need and necessity of time if the seriousness of the problem is considered in a dispassionate manner and not being influenced by the emotional issue involved.

34. Needless to say that pet animals are an asset to the society. It is also true that animals are required to be protected from unnecessary pain and suffering. It is equally true that love and compassion for animals is growing and is a sign of culture and civilization. However, when it comes to choosing between the suffering of human beings and suffering they undergo particularly due to bite of the stray dogs, either they being rabid dogs or affected by rabies, then obviously, weightage will have to be given for the suffering of human beings.

35. Apart from the cases of dog bites reported in the Hospitals, scores of dog biting cases go unreported, particularly the children are the victims because of the fear of the consequences, may be taking of eleven or fourteen injections. The problem, therefore, is more serious than felt.

36. Catching the stray dogs or capturing them for the purpose of sterilizing is also not an easy task. In Writ Petition No.1596 of 1998, it was agreed by the parties to the Petition that the dogs should be captured by using humane methods such as lassoing or soft-loop animal catchers such as those prescribed under the provisions of Prevention of Cruelties to Animals (Capturing of Animals) Rules, 1972. The Counsel for the Petitioners also urged that when the number of stray dogs runs into lakhs in every big city and they are totally unmanageable, capturing of dogs is most difficult job; firstly, because dogs are very intelligent, they have well developed sixth sense and they get scent of any attempt of catching them well in advance. They run for the safety and liberty and those engaged in catching the dogs have to run after them creating problems for the traffic and others. Petitioners' Counsel contended that if dogs are to be captured even from an enclosure, it is extremely difficult and when they are to be captured from an open space or open places where there are no limitations on their freedom, it is almost an impossible task. The manpower required for catching a single dog and the time required to spend for doing it is completely out of proportion. After capturing the stray dogs they have to

sterilize them and then put them at the same place from where they have captured, which is, in fact, totally impracticable and serves no purpose.

37. We find considerable force in these submissions. Dogs may have been tamed, but, in fact, they are wild animals and when any attempt to capture them is made, they are likely to become ferocious and attack the capturers as a last weapon in their armoury. The method of capturing stray dogs to which parties agreed in Writ Petition No.1596 of 1998 cannot, therefore, be an effective method in controlling the menace of dogs.

38. The Counsel for the Respondents, particularly Respondents No.6 and 7, and the Intervenor, contended that killing the dogs on the roads will be creating ghastly scene in public. It was also brought to our notice that some Municipalities provide that for proof of killing dogs, tail was required to be cut and produced before the Authorities and all this being done in the eyes of the public where children and others are the spectators. If this is, in fact, being done at public places, then certainly, this practice requires to be changed. However, the crucial question will be of deciding to eliminate

stray dogs in terms of the provisions of Prevention of Cruelty to Animals Act and the Municipalities Act. Once that position becomes clear then the method of elimination can be found out or suggested.

39. Our attention was repeatedly drawn, however to the judgment of this Court in Writ Petition No.1596 of 1998 **(Viniyg Parivar Trust & Anr. v. Municipal Corporation of Greater Mumbai & Ors.)** wherein it was ordered that "no stray dogs shall be killed as a rule, subject to the exception of critically ill, violent, fatally injured or rabid dogs." It was also argued that dog killing has come to an end by virtue of this judgment of the Division Bench of which M.B.Shah,C.J.(as he then was), was a member.

40. However, Counsel for the Petitioners contended that this judgment came to be delivered by the Division Bench in the said Petition not after hearing both the sides and deciding all the relevant issues involved, but the judgment came to be delivered on the basis of Comprehensive Guidelines which were submitted to the Court by all the parties concerned and the judgment has

reproduced these Guidelines. According to the Petitioners, the judgment does not, therefore, conclusively decide the issue as it has not considered the provisions of the Prevention of Cruelty to Animals Act, the Bombay Municipalities Act, the Maharashtra Municipalities Act, etc.

41. A perusal of the judgment in Writ Petition no.1596 of 1998 shows that it is an Order in terms of the Comprehensive Guidelines submitted by consent of the parties to the said Petition. Therefore, considering all the issues involved, the seriousness of the problem of stray dogs, the provisions of Prevention of Cruelty to Animals Act, the Goa Municipalities Act, the Bombay Municipalities Act, and the Maharashtra Municipalities Act quoted above and the scope and the object of the aforesaid enactments, this is a fit case for referring the matter to larger Bench so that the larger Bench can decide whether in the circumstances and seriousness of the problem and the danger posed and menace caused by the stray dogs requires to be checked by resorting to the provisions of Sub-section (3) of Section 11 of the Prevention of Cruelty to Animals Act and the other provisions of the Municipalities Act or whether elimination or killing of the stray dogs has to be

totally prohibited inspite of the aforesaid provisions.

42. Therefore, in our considered opinion, the Judgment rendered by this Court in Writ Petition No.1596 of 1998 needs re-consideration, as certain provisions of the Prevention of Cruelty to Animals Act, 1960 and provisions of the different Municipalities Act were possibly not brought to the notice of the learned Judges.

43. We, therefore, direct the Registry to place the papers before the Honourable the Chief Justice of Bombay High Court for further and necessary action of formation of larger Bench to consider the following issues:-

(1) Whether in the circumstances and seriousness of the problem, the danger posed and the menace caused by the stray dogs, resort can be had to the provisions of Sub-section (3) of Section 11 of the Prevention of Cruelty to Animals Act, 1960 and the relevant provisions of the Bombay Municipalities Act, Maharashtra Municipalities Act and Goa Municipalities Act and other enactments;

(2) Whether inspite of the aforesaid provisions of Sub-section (3) of Section 11 of the Prevention of Cruelty to Animals Act, 1960 and other Acts referred to above, the killing of the stray dogs has to be totally prohibited.

D.G. DESHPANDE,J.

P.V. HARDAS,J.

ac.